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Jason C. Miller

Miller Johnson, millerj@millerjohnson.com

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Community as a Redistricting Principle: Consulting Media Markets in Drawing District Lines

JASON C. MILLER *

Very soon, legislators, commissioners, and judges will begin battling over how to draw the lines for the next decade's legislative districts. In trying to meet the federal legal requirements, line drawers will look at federal requirements like population equality¹ and race;² state requirements like protecting county and municipal lines,³ compactness,⁴ and contiguity;⁵ and practical political requirements like protecting incumbents⁶ and gerrymandering for partisan advantage.⁷ But hopefully, somewhere in the mix, there is room for common-sense goals like increasing voter participation and drawing districts that fit public expectations. To achieve these goals, legislative districts, both for Congress and the state house, should be drawn to reflect the actual communities that exist in that state. A city and its suburbs or nearby neighboring cities share an identity, culture, and economy that simply ought to be linked in the same district to the extent possible. Perhaps most importantly, communities often share the same media

* Associate at Sherman & Howard L.L.C. in Denver, Colorado. University of Michigan J.D. 2009. The author would like to thank Ellen Katz, Laura Davis, and Nicole Traxler-Wright for their feedback on this Article. The views expressed in this Article are the author's alone.

1. *Karcher v. Daggett*, 462 U.S. 725, 732 (1983) (requiring "absolute equality" of population in congressional districts).

2. *See, e.g., Bartlett v. Strickland*, 129 S. Ct. 1231, 1238 (2009) (deciding whether Voting Rights Act requires a district be drawn to help racial minority elect preferred candidate) (plurality opinion); *see also* Ellen D. Katz, *From Laredo to Fort Worth: Race, Politics, and the Texas Redistricting Case*, 105 MICH. L. REV. FIRST IMPRESSIONS 38, 39 (2006) ("[J]urisdictions must respect at least some existing racially-defined communities . . .").

3. *E.g.,* MICH. COMP. LAWS § 3.63(c) (2004) (requiring that the redistricting plan break as few county, city, and township boundaries as reasonably possible); IOWA CODE § 42.4(2) (2009) ("[D]istrict boundaries shall coincide with the boundaries of political subdivisions of the state."); *see also* *Vieth v. Jubelirer*, 541 U.S. 267, 298 (2004) (discussing protection of political subdivision lines).

4. *See, e.g.,* MONT. CONST. art. 5, § 14; IOWA CODE § 42.4(4) (2009); MICH. COMP. LAWS § 3.63(c) (2004).

5. *See, e.g.,* MONT. CONST. art. 5, § 14; IOWA CODE § 42.4(3) (2009); MICH. COMP. LAWS § 3.63(c) (2004).

6. *See Vieth*, 541 U.S. at 300 (mentioning "the time-honored criterion of incumbent protection").

7. Bonnie Erbe, *Democrats Must Keep Politics in 2010 Census; Gerrymander—and Gender-mander—Away!*, U.S. NEWS & WORLD REP. (Mar. 3, 2009), <http://www.usnews.com/blogs/erbe/2009/03/03/democrats-must-keep-politics-in-2010-census-gerrymander--and-gender-mander--away.html> (describing partisan gerrymandering as a uniquely American tradition, like Thanksgiving).

market. Two current congressional districts offer examples of lines that ignore these common-sense boundaries and unnecessarily split communities.⁸

Michigan's Seventh Congressional District grabs the suburbs of Lansing, where Michigan State University's green and white colors dominate, and links them with Ann Arbor, home of its arch-rival University of Michigan.⁹ The district splits the Ann Arbor area in half, with lines drawn for partisan advantage rather than to reflect any common-sense approach. The rest of the district includes rural areas of southern Michigan. The distinctive communities in this district have nothing in common and the obvious community lines, apparent on any map or to anyone who lives in this district, are ignored. Furthermore, the district crosses four media markets—Detroit, Lansing, Toledo, and Grand Rapids/Kalamazoo/Battle Creek.¹⁰ The major newspapers in the district must cover multiple members of Congress in any story about federal legislation; opponents wishing to criticize the incumbent on broadcast television or radio would spend inefficiently, as much of their advertising dollars would reach voters outside of the district.¹¹ The reality of the district's shape almost certainly influences campaign strategy, whether or not it ultimately drives up the cost.¹² The lines respect city and most county borders, but do so by linking an odd series of counties and subdivisions at the expense of actual communities.

8. This problem, of course, is not limited to my two examples. "These gerrymandered districts often cover wide areas of territory, generally encompassing numerous communities and many different media markets." Jeffrey G. Hamilton, Comment, *Deeper into the Political Thicket: Racial and Political Gerrymandering and the Supreme Court*, 43 EMORY L.J. 1519, 1557 (1994).

9. CENTER FOR GEOGRAPHIC INFORMATION, DEPARTMENT OF INFORMATION TECHNOLOGY, MICHIGAN'S 15 CONGRESSIONAL DISTRICTS: 2001 APPORTIONMENT PLAN (2002), available at http://www.michigan.gov/documents/Congress01-state-E_43697_7.pdf.

10. Fitzzy, *7th District Media Markets – Part II*, WALBERG WATCH (July 8, 2008, 6:02 PM), http://walbergwatch.blogspot.com/2008_07_01_archive.html.

11. As one court explained in a slightly different context, "the lack of congruence between media markets and district boundaries render [television] advertising an inefficient and ineffective way to communicate with voters." *Landell v. Sorrell*, 382 F.3d 91, 130 (2d Cir. 2004). Campaigns in such areas might turn to cable advertising as an alternative to broadcasting into other districts or states.

12. See Shanto Iyengar, Daniel H. Lowenstein & Seth Masket, *The Stealth Campaign: Experimental Studies of Slate Mail in California*, 17 J.L. & POL. 295, 300 (2001) ("[F]or candidates running in districts much smaller than the media markets in which they are located, mail generally is the only economically feasible medium."); see also Seth Grossman, *Creating Competitive and Informative Campaigns: A Comprehensive Approach to "Free Air Time" for Political Candidates*, 22 YALE L. & POL'Y REV. 351, 383 (2004) ("Cable, on the other hand, enables candidates to more precisely channel their messages to individuals within their voting districts—to be more 'geoefficient,' in the jargon of cable-television sales representatives. This quality of cable television is . . . important to . . . candidates who represent[] a district that is within a large media market or covers multiple media markets . . .").

Some districts do not even have the decency to respect city lines. Ohio's Thirteenth Congressional District cuts a jagged, diagonal line from Lake Erie across the Cleveland suburbs and down into Akron. Summit County, with Akron as its county seat, is carved into three jagged districts that divide individual neighborhoods. Akron's eastern suburbs are in a district dominated by Youngstown to the east. Of course, drawing districts with equal population requires some bending of community and local government lines to even out the population, but the greater Akron area is large enough to fill its own congressional district.¹³ There are numerous advantages to putting a community like Akron into a single congressional district.

When a congressional district covers a single media market, or at least does not snake across several, it makes it easier for the media to track and report on the representative and his or her actions. This in turn makes it easier for the public to identify their elected official and that official's actions. And a single media market also makes it easier to publicly oppose or challenge a representative's policies through letters to the editor, paid media, or "earned media" generated through demonstrations.¹⁴ This might help to explain the link between media markets and voter turnout, as the evidence indicates that people who live in districts drawn around media market lines—and not necessarily political subdivision lines—are more likely to vote.¹⁵ This is likely the result of voters being more informed about the candidates.¹⁶ The data shows that "[t]he more a district conforms to its media environment, the more likely it is that citizens are able to recall the names of candidates running for office in that district."¹⁷ The increased information costs and difficulty in learning about candidates when districts do not conform to media markets stifle participation.¹⁸ Furthermore, disrupting media markets might particularly burden minority voter turnout.¹⁹

13. In 2000 the average size of a congressional district was 646,952. Congressional Apportionment, NATIONALATLAS.GOV, http://www.nationalatlas.gov/articles/boundaries/a_conApport.html#two. The Akron metro area had a population of 694,960 in 2000. *Akron, OH MSA Population and Components of Change*, REAL ESTATE CTR., <http://recenter.tamu.edu/data/popm/pm0080.htm>.

14. "Earned media" is a common political phrase for free media, as contrasted with paid media such as advertisements. Examples include op-eds and news coverage. See use of the phrase in Manu Raju, Jonathan Martin & John Bresnahan, *Finger-Pointing Begins for Dems*, POLITICO (Jan. 19, 2010, 12:29 AM), <http://dyn.politico.com/printstory.cfm?uuid=44530A92-18FE-70B2-A84AAC11926FC1EE>.

15. Richard N. Engstrom, *District Geography and Voters*, in REDISTRICTING IN THE NEW MILLENNIUM 65, 77 (Peter F. Galderisi ed., 2005) ("[P]eople who live in districts with greater levels of conformity to media markets are more likely to turn out to vote than those in districts with lower levels of conformity to media-market boundaries.").

16. *Id.* at 78.

17. *Id.*

18. *Id.* at 77–78.

19. Felix Oberholzer-Gee & Joel Waldfogel, *Strength in Numbers: Group Size and Political Mobilization*, 48 J.L. & ECON. 73, 74 (2005).

More name identification, an easier time identifying the official's votes on key issues, and higher voter turnout create the possibility for greater accountability. It is harder to get voters involved and active in the political process if they cannot figure out who their representative is—people often have trouble understanding that they can live in the same town and have different representatives, or why the U.S. House website requires them to use their ZIP+4 to email their member of Congress. Many grassroots political organizations are created based on the community, not the artificial district lines.²⁰ Anti-war groups organize in Ann Arbor, but find their community split in two. Pro-life groups in the greater Akron area have to help their members identify their member of Congress before encouraging them to express their opinion.²¹ As Judge Jones explained:

Traditional, objective districting criteria are a concomitant part of truly “representative” single member districting plans. Organized political activity takes place most effectively within neighborhoods and communities; on a larger scale, these organizing units may evolve into media markets and geographic regions. When natural geographic and political boundaries are arbitrarily cut, the influence of local organizations is seriously diminished. After the civic and veterans groups, labor unions, chambers of commerce, religious congregations, and school boards are subdivided among districts, they can no longer importune *their* Congressman and expect to wield the same degree of influence that they would if all their members were voters in his district. Similarly, local groups are disadvantaged from effectively organizing in an election campaign because their numbers, money, and neighborhoods are split. Another casualty of abandoning traditional districting principles is likely to be voter participation in the electoral process. A citizen will be discouraged from undertaking grass-roots activity if, for instance, she has attempted to distribute leaflets in her congressman's district only to find that she could not locate its boundaries.²²

20. That a district's shape can interfere with normal organizing seems obvious. *See* Pope v. Blue, 809 F. Supp. 392, 397 n.4 (W.D.N.C. 1992) (“Interference with normal organizing and campaigning activities could be expected to be particularly acute in this district, which spans the state's three largest media markets and stretches over 160 miles.”).

21. *See* Engstrom, *supra* note 15, at 67 (“[N]ot knowing where a district takes an unexpected right turn means not knowing who in the immediate area is, and is not, in the district. This confusion about district boundaries can lead to confusion about which legislative race to pay attention to and who among one's neighbors is also in the relevant district.”).

22. Vera v. Richards, 861 F. Supp. 1304, 1334 n.43 (S.D. Tex. 1994) (three-judge panel) (invalidating a redistricting plan) (emphasis in original).

Sprawling, irregularly shaped districts may have competing interests and lack a sense of community.²³ Districts drawn around publicly understood communities should be easier to represent. When people live and work in the same district, rather than crossing a district line in a short commute, their economic interests might be easier to understand and stand up for. Even political party leaders might find advantages in having districts drawn up around communities. Party leaders are often faced with the difficult task of recruiting candidates to run against incumbents in “safe” districts. These sacrificial lambs may have no chance of winning, but they offer voters a choice and play a vital, but threatened, role in our democracy.²⁴ When district lines make little sense, instead of simply seeking out willing party activists or community leaders, party hacks must get out their maps and investigate which precinct their candidate hopefuls live in. Diagonal districts that do not reflect community lines and that zigzag through media markets could make it harder and more costly for a challenger to get her message out,²⁵ adding difficulty to the candidate recruitment process. And, at the very least, community boundaries are a much more legitimate basis than the partisanship or incumbent protection that motivates most redistricting.

The problems with considering community as a redistricting principle are easy to overcome if the line drawers desire to do so.²⁶ While the equal-population requirement necessarily forces communities to be broken if they do not fit the exact number required of equivalent congressional districts, line drawers can make at least some effort to mitigate this when possible. And when it is possible to draw an entire district around a single and distinct community—such as the Akron metropolitan area—they should. Defining communities presents its own difficulty because “community” is a nebulous and somewhat subjective term. But a little bit of common sense can go a long way in this regard, as most informed people have some idea of how the metropolitan areas in their state think of themselves.

Moreover, media markets might be a useful starting tool, as they offer a clear identification of the boundaries of a community.²⁷ Media markets are important for

23. See *DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1086 (N.D. Fla. 1992) (“This long, irregularly shaped district traverses parts of seventeen counties and involves three major media markets. The communities linked in this sprawling district are likely to have competing interests and do not constitute communities of interest.”).

24. For a discussion on the shortage of candidates, see Jason C. Miller, *The Unwise and Unconstitutional Hatch Act: Why State and Local Government Employees Should Be Free to Run for Public Office*, 34 S. ILL. U. L.J. 313 (2010).

25. See Engstrom, *supra* note 15, at 82–83 (“Cleaner district-media market relationships should make it easier for challengers to get their names out to potential voters, therefore increasing their chances of defeating incumbents.”).

26. See, e.g., *Daggett v. Kimmelman*, Nos. 82-297, 82-388, 1988 U.S. Dist. LEXIS 1296, at *9 (D.N.J. Feb. 16, 1988) (noting that line drawer had made “reference to media markets” in fashioning district).

27. Sometimes communities and their media markets straddle state lines, and in such cases districts will obviously have to split them. See, e.g., Bradley A. Smith & Jason Robert Owen, *Boundary-Based Restrictions in Boundless Broadcast Media Markets*: *McConnell v.*

two reasons. First, they are important as actual media markets—a concentration of people consuming the same newspapers and television and radio stations—because the ease of gathering and disseminating information about candidates increases voter turnout. Second, media markets are important as indicia of practical community boundaries, driven in part by market forces and a spontaneous-order process. Even if the importance of traditional broadcast media outlets is waning, local-focused new media, such as local and regional political blogs, seem to continue to fit the old media market lines. Media market boundaries are probably most important for congressional districts because of their size—many state legislative districts might naturally conform to media markets—but in all cases districts should conform to media markets to the extent reasonable under the circumstances.

The location of actual communities, whether analyzed through defined media markets or more complex formulations that look at additional boundaries (such as school districts), should be among the criteria line drawers consider during redistricting. Community boundaries as defined by media markets should not be the only criteria for courts to base a decision on, but should be included among the many factors examined when forced to decide among competing plans.²⁸ More scholarship is needed to examine the significance of media markets to redistricting,²⁹ but there are good reasons to include common sense community considerations in any push for redistricting reform or discussion of the optimal way to create districts.

FEC's *Underinclusive Overbreadth Analysis*, 18 STAN. L. & POL'Y REV. 240, 253 (2007) ("The Cincinnati media market covers southwestern Ohio and parts of Indiana and northern Kentucky."). But in most circumstances, media markets will offer a helpful starting point for identifying community lines.

28. A few courts have already looked at media markets in deciding redistricting cases. *See, e.g.*, *Session v. Perry*, 298 F. Supp. 2d 451, 502 (E.D. Tex. 2004) (discussing media markets); *Johnson v. Miller*, 864 F. Supp. 1354, 1365 (S.D. Ga. 1994) (noting that one of the reasons the state rejected a proposed districting plan was that "a candidate to be successful will have to run in four major media markets in Georgia"); *Shaw v. Hunt*, 861 F. Supp. 408, 472 (E.D.N.C. 1994) (noting that both parties submitted evidence of media markets in a redistricting case); *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 691 (D. Ariz. 1992) (considering media markets in choosing among redistricting plans).

29. *See Engstrom, supra* note 15, at 82 (noting that media markets are "rarely discussed in analyses of redistricting questions").